



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9692]

RIN 1545-BL92

Authority for Voluntary Withholding on Other Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 3402(p) of the Internal Revenue Code (Code) relating to voluntary withholding agreements. The final regulations allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The regulations affect persons making and persons receiving payments for which the IRS issues subsequent guidance authorizing the parties to enter into voluntary withholding agreements.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability date: For date of applicability, see §31.3402(p)-1(d).

FOR FURTHER INFORMATION CONTACT: Linda L. Conway-Hataloski at (202) 317-6798 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 31 under section 3402(p) of the Code. On November 29, 2013, Treasury and the IRS published in the **Federal Register** temporary regulations (TD 9646) at 78 FR 71476 and a notice of proposed rulemaking by cross-reference to temporary regulations (REG-146620-13, 78 FR 71542) under section 3402(p) of the Code relating to voluntary withholding.

Two written comments responding to the notice of proposed rulemaking were received but neither comment addressed issues relevant to the notice of proposed rulemaking or the temporary regulations. No public hearing was requested or held. Accordingly, the proposed regulations (which cross referenced the temporary regulations) are adopted without change as final regulations.

Explanation of Provisions

These final regulations under section 31.3402(p)-1 adopt without change the proposed regulations and the temporary regulations that allow the Secretary to describe other payments subject to voluntary withholding agreements in guidance published in the Internal Revenue Bulletin (IRB). Similarly to the proposed and the temporary regulations, these final regulations also provide that the IRB guidance will set forth requirements regarding the form and duration of the voluntary withholding agreement specific to the type of payment from which withholding is authorized.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been

determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Linda L. Conway-Hataloski, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, personnel from other offices of the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.3402(p)-1 is amended by:

1. Revising the headings of paragraphs (a) and (b).

2. Removing the language “3402(b)” in the first sentence and “3402(p)” in the third sentence of paragraph (a) and “3402(p)” in the five places that it appears in paragraph (b) and adding “3402(p)(3)(A)” in their place.

3. Adding paragraphs (c) and (d).

The revisions and additions read as follows:

§31.3402(p)-1 Voluntary Withholding Agreements.

(a) Employer-employee agreement. * * *

(b) Form and duration of employer-employee agreement. * * *

(c) Other payments. The Secretary may issue guidance by publication in the Internal Revenue Bulletin (IRB) (which will be available at www.irs.gov) describing other payments for which withholding under a voluntary withholding agreement would be appropriate and authorizing payors to agree to withhold income tax on such payments if requested by the payee. Requirements regarding the form and duration of voluntary withholding agreements authorized by this paragraph (c) will be provided in the IRB guidance issued regarding specific types of payments.

(d) Effective/applicability date. (1) This section applies on and after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

§ 31.3402(p)-1T [Removed]

Par. 3. Section 31.3402(p)-1T is removed.

John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: September 8, 2014

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

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